**GOVT 2306  
Texas and the States within the National Governing Landscape: Federalism  
Part Three: The Stages of Federalism**

**Introduction**  
  
Over 200+ years of American history, the precise relationship between the national and state governments has changed.   
  
Political scientists who study these changes have developed different terms to describe these changes. They vary from one another in many ways, but here are a few terms that help us understand when these changes happen and what forces drove those changes.

The basic story all political scientists tell is that the scope of national powers has expanded over the course of American history.   
  
The only debate is over how best to explain the expansion.

Alexis de Tocqueville, among others, argued that there would be a natural tendency for the national government to expand it powers over the states.   
  
As we will see, he was correct.

This dispute reflects an ongoing conflict about whether public policies should be established and promoted on the national or the state level.   
  
Each reflects the influence of different groups and coalitions – the things promoted at the national level can conflict with those promoted at the state level.

The following links take you to four different looks at federalism, just so you get an idea of the whole range of debate over the subject.  
  
[Four stages](http://www.csun.edu/~rprovin/PDFs/stages.pdf).  
[Six Stages](http://quizlet.com/1944295/stages-of-federalism-flash-cards/).  
[Seven Stages](https://www.youtube.com/watch?v=-N6mae601DI).  
[Eight Stages](http://www.laits.utexas.edu/gov310/CF/stagesfed/).

For an early overview of these subjects as they relate to Texas [click here for: Texas’s Federal Heritage](http://www.austincc.edu/gharriso/TXReadings/TXGovtReading3.pdf).

Lets take a look at each, then we’ll define each stage and put them in historical perspective. The overlaps reflect conflict over when each stage begins and ends.  
  
Here’s a list

Nationalization: 1789 – 1830  
Dual Federalism: 1787 – 1937 or 1836 – 1933  
Cooperative Federalism: 1933 – 1961 or 1937 – 1963  
Creative Federalism: 1961 – 1969  
Regulated Federalism: 1963 – 1981  
New Fiscal Federalism: 1969 – 1977  
Partnership Federalism: 1977 – 1981  
New Federalism: 1981 - current  
New Regulatory Federalism: 1981 – 1989  
Coercive Federalism: 1989 – 1993  
Reinventing Federalism: 1993 – current  
Competitive Federalism: current

Here’s a brief blurb on each:

Nationalization  
1789 - 1830

The powers of the national government are clarified and defined by Supreme Court decisions under John Marshall.  
  
The concept of implied powers is established and used to authorize additional national powers.

Dual Federalism  
1787 – 1937  
or  
1836 – 1933

Questions regarding state powers are defined and clarified by the Supreme Court under Roger Taney.  
  
The ability of the states to push back the national government is established. A tense relationship develops between the nation and states – some of them anyway. Also called layer cake federalism because it created a clear line between national and state powers.

Cooperative Federalism  
1933 – 1961  
or  
1937 - 1963

The powers of the national government begin to expand and certain functions began to be shared by the national, state and local governments.  
  
This era began either with the election of FDR (1933), or the Supreme Court decision in NLRB v. Jones (1937). Also called marble cake federalism because the national and state governments began sharing governing functions and collaborating on national problems.

Creative Federalism  
1961 – 1969

Promoted by Kennedy’s [New Frontier](http://en.wikipedia.org/wiki/New_Frontier) and Johnson’s [Great Society](http://en.wikipedia.org/wiki/Great_Society). Grants provided to establish partnerships between all levels of government, especially cities, to address an increasing number of public problems like poverty.   
  
Block grants and categorical grants increase national influence over state and local governments. Also called picket fence federalism.

Regulated Federalism  
1963 – 1981

The national government begins to threaten to withhold federal grants if certain nationally defined purposes are not addressed by the states.

New Fiscal Federalism  
1969 – 1977

Promoted by President Nixon. Features decentralization and revenue sharing.

Partnership Federalism  
1977 – 1981

Efforts during the Carter Administration to enhance cooperation between the states and the national government.

New Regulatory Federalism  
1981 – 1989

Promoted by President Reagan. The federal government’s regulatory role is cut back, states granted additional authority in regulating industry within its borders. Revenue sharing ends.

New Federalism  
1970s – 1990s  
1981 - ?

Expansions of the national government are rolled back. Administrative powers returned – devolved - to the state governments.   
  
Also called on your own federalism, characterized by deregulation.

Coercive Federalism  
1989 – 1993

Promoted by President HW Bush. Unfunded mandates and preemption used to influence the actions of state and local governments.

Reinventing Federalism  
1993 – ?

An initiative by President Clinton. Efficiency and responsiveness emphasized. The national government steered projects forward while state and local governments provided the muscle. Waivers provided for states in order to foster innovation and experimentation.

Competitive Federalism  
?

The national and state governments compete for funds made available for various projects. Mandates also increased, both funded and unfunded.

A bit more detail on each.

Nationalization  
1789 - 1830

This period is not recognized by all scholars, but some argued that this was the period that the national government cemented its authority in certain areas.   
  
National power was defined and clarified.

This was helped along by the early interpretations of the Constitution by Chief Justice [John Marshall](http://en.wikipedia.org/wiki/John_Marshall), who was a Federalist and had served in the Adams Administration prior to being appointed – by Adams – the Supreme Court.

Two cases stand out.  
  
McCulloch v. Maryland  
Gibbons v. Ogden

[McCulloch v. Maryland](http://en.wikipedia.org/wiki/McCulloch_v._Maryland) established that (1) the necessary and proper clause authorized the national government to charter a national bank and (2) that the effort by Maryland to tax a branch of the Second Bank of the United States was an illegal effort of the state to impede the valid exercise of power by the national government and a violation of the Supremacy Clause.

The establishment of a national bank was one of a series of decisions [promoted](http://en.wikipedia.org/wiki/Hamiltonian_economic_program) by Alexander Hamilton which would [nationalize the financial system](http://en.wikipedia.org/wiki/American_School_(economics)) in the United States.   
  
It did so by assuming powers not clearly delegated to the national government in the Constitution.

Doing so minimizes the ability of states to do the same.

[Gibbons v Ogden](http://en.wikipedia.org/wiki/Gibbons_v._Ogden) decided that the power to regulate interstate commerce fully belonged to the national government, not the states.   
  
The states still had the sole ability to regulate commercial activity within its borders. This would not change until the New Deal.

Marshall was also instrumental in strengthening the power of the US Supreme Court and most importantly claiming for it the power of judicial review in the case Marbury v Madison.  
  
This established both that the US Supreme Court was the final authority on the meaning of the Constitution and the final arbitrator on any court case in the United States. [Click here for a look at the Marshall Court](http://www.supremecourthistory.org/history-of-the-court/history-of-the-court-2/the-marshall-court-1801-1835/).

Marshall supported the idea that the language within the U.S. Constitution could be loosely interpreted to achieve national objectives.

Dual Federalism  
1787 – 1937  
1836 – 1933

While some argue that federal system always had a “dual” nature – and that the national and state governments has defined areas of authority from the minute the Constitution was ratified, other argue that this did not occur until Roger Taney was appoint to be Chief Justice by Andrew Jackson in 1836 and the special powers of the states were clarified and defined by the decisions made during his tenure, under his guidance.   
  
[Click here for info on the Taney Court](http://www.supremecourthistory.org/history-of-the-court/history-of-the-court-2/the-taney-court-1836-1864/).

Taney was a close advisor to Andrew Jackson and an adherent of [Jacksonian Democracy](http://en.wikipedia.org/wiki/Jacksonian_democracy) – which was also important to the people who founded Texas.

Sam Houston was also an advisor to Andrew Jackson. Roger Taney’s elevation to the court is tied into the development of Texas.

The basic principles of Jacksonianism are all based on the idea that the common man – as long as he was white – could and should participate in government.   
  
State and local control was also important, and policies were promoted that placed limits on the national government.

In addition to universal white male suffrage, Jacksonians supported laissez-faire economics, manifest destiny, and opposed the existence of a national banks – meaning that they opposed Marshall’s previous decision in [McCulloch v. Maryland](http://en.wikipedia.org/wiki/McCulloch_v._Maryland).   
  
The Constitution should not be interpreted broadly in order to further national objectives. It should be interpreted narrowly in order to allow the states the ability to establish and implement their own policies. State powers were expanded under his stewardship.

Andrew Jackson would not renew the charter of the [National Bank](http://en.wikipedia.org/wiki/Second_Bank_of_the_United_States) – he [vetoed](http://millercenter.org/president/events/07_10) 1832 the bill which would have done so. [Click here for the veto message](http://avalon.law.yale.edu/19th_century/ajveto01.asp).  
  
Roger Taney was Jackson’s Attorney General and wrote the bulk of the veto message. Doing so restricted the concept of implied powers and returned banking authority to the states.

A variety of state rights movement were picking up steam during this period, including the [nullification movement](http://en.wikipedia.org/wiki/Nullification_Crisis), which was based on the logic within the [Kentucky and Virginia Resolutions](http://en.wikipedia.org/wiki/Kentucky_and_Virginia_Resolutions).  
  
In 1832, South Carolina passed an [Ordinance of Nullification](http://en.wikipedia.org/wiki/Ordinance_of_Nullification) which claimed that states – as sovereign entities – could declare national laws null and void if they had an impact on state affairs.

The most noteworthy case during Taney’s tenure was [Scott v. Sanford](http://en.wikipedia.org/wiki/Dred_Scott_v._Sandford) which hinged on whether a slave who had spent time in a free state could sue for freedom.  
  
The decision in the case was that a slave could not do so. They were not citizens with rights to take cases to the court.

What’s more, Taney – who authored the decision – ruled that the national government had violated the Constitution when it prohibited slavery in northern states in the [Missouri Compromise](http://en.wikipedia.org/wiki/Missouri_Compromise).  
  
 By banning slavery in the territories, the national government had violated the property rights of slave owners as inferred in the 5th Amendment. The law was overturned – some argue this helped lead to the Civil War.

Conflict over race continued to divide the national and state governments following the Civil War.   
  
The Civil War Amendments – the 13th, 14th and 15th – expanded national power over the states by stating that could no longer recognize slavery, had to treat persons in their jurisdiction equally, and could not restrict the right to vote based on race, ethnicity and previous condition of servitude.

While these amendment – in theory – expanded national power over the states, states were able to push back successfully for many decades. The effectiveness of these laws was muted considerable.   
  
For example: Plessy v. Ferguson upheld the ability of cities to treat citizens unequally based on race in order to uphold public order, as long as the separated facilities were substantively equal.

Texas was a strong supporter of efforts to limit efforts to expand the power of the national government not only because it was a slave state, but because commercial interests – especially railroads – were jeopardizing agrarian interests in the state.

Cooperative Federalism  
1933 - 1961  
1937 - 1963

The terms “cooperative federalism” refers to the idea that the national and state – and even local – governments should work together to address certain defined policy issues, or problems.   
  
It is important to note that the shift from Dual to Cooperative Federalism was not abrupt. There were gradual expansions of national government during the previous decades due to the Progressive Movement, as well as technological developments that made it easier to travel and communicate over state lines.

Beginning in the 1880s, the national government began to slowly and steadily expand its influence over industry (through regulations, not just promotion) and other matters.  
  
Here is a sample list of legislation which expanded national powers:

1873 – [Comstock Laws](http://en.wikipedia.org/wiki/Comstock_laws)  
1887 – [Interstate Commerce Act](http://en.wikipedia.org/wiki/Interstate_Commerce_Act_of_1887)   
1906 – [Pure Food and Drug Act](http://en.wikipedia.org/wiki/Pure_Food_and_Drug_Act)  
1910 – [Mann Act](http://en.wikipedia.org/wiki/Mann_Act)1913 – [Federal Reserve Act](http://en.wikipedia.org/wiki/Federal_Reserve_Act)  
1913 – [The 16th Amendment](http://en.wikipedia.org/wiki/Sixteenth_Amendment_to_the_United_States_Constitution)  
1914 – [Clayton Antitrust Act](http://en.wikipedia.org/wiki/Clayton_Antitrust_Act)  
1916 – [Federal Farm Loan Act](http://en.wikipedia.org/wiki/Federal_Farm_Loan_Act)  
1916 – [Federal Child Labor Act](http://en.wikipedia.org/wiki/Keating%E2%80%93Owen_Act)

The most significant piece of legislation was the [Interstate Commerce Act](http://en.wikipedia.org/wiki/Interstate_Commerce_Act_of_1887) of 1887. It allowed the national government to regulate railroads in response to complaints stemming from their [monopolistic practices](http://www-cs-faculty.stanford.edu/~eroberts/cs181/projects/corporate-monopolies/government_history.html) – notably the setting of unjust and excessive rates.   
  
Texas – which at that point was a poor agrarian state – supported this expansion of power. It also attempted to regulate railroad rates through the Railroad Commission.

Many other proposals to expand national power were limited however. Some that were passed were later found unconstitutional because they were not found to be authorized under the Constitution. Attempts to justify these under the Commerce Clause were denied.   
  
Much of this changed due to the stock market crash and the ensuing Great Depression. This created political pressure to expand

The dates listed (1933 and 1937) refer to two different shifts. The former the inauguration of Franklin Roosevelt into the White House. He would soon introduce and promote legislation authorizing the national government to address the problems caused by both events. This was also known as the New Deal.   
  
The second date refers to when the Supreme Court ruled that the Commerce Clause should be interpreted broadly in order to justify laws indirectly related to commerce.

Two Key Court Cases:   
  
[National Labor Relations Board v Jones and Laughlin Steel Corporation](http://en.wikipedia.org/wiki/National_Labor_Relations_Board_v._Jones_%26_Laughlin_Steel_Corporation)  
  
[Wickard v. Filburn](http://en.wikipedia.org/wiki/Wickard_v._Filburn)

In the first case, the definition of commerce was expanded to include a variety of activities – like manufacturing and labor – related to the commercial process, though not commerce narrowly defined.

In the second, the court ruled that the national government could regulate intrastate commerce if that activity affected interstate commerce.

Both provided a constitutional justification for a significant expansion of national power over the states.  
  
The use of the state to promote national interests ensued.

This marked the beginning of the era of cooperative federalism.  
  
And it has a strong Texas connection – both for it and against it.

FDR ran on a ticket with a Texan – [John Nance Garner](http://en.wikipedia.org/wiki/John_Nance_Garner) – who was Speaker of the House and as vice president would work with congressional leaders to engineer the passage of New Deal legislation.

Garner is famous for having said that the office of the Vice President is not worth a bucket of warm spit.  
  
He apparently referred to a different fluid.

Texas was conflicted over the New Deal. In the previous decades Texas businessmen – thanks to the growing oil industry – became more powerful. Not only oil, but related industries like construction and steel production flourished. Agrarian interests were being challenged within the state. It is important to note that Texas remained an agrarian state for longer than most other states. This impacted not only internal politics, the relationship the state had with the national government.

The New Deal sought to address high unemployment by developing large scale infrastructure projects. Texas businessmen liked the jobs, but the New Deal also pushed for expanded rights for workers – notably collective bargaining rights.   
  
Business interests in Texas did not like that part of the New Deal.

That last point is huge:   
  
Texas, as a whole, does not support collective bargaining rights. Those rights are more protected by the national government. This creates the obvious tension, with the national government promoting the interests of unions and the state of Texas promoting that of businesses. These conflicts continue. We will highlight these conflicts as we go forward.

The New Deal marked a change in the national government’s orientation towards business. Instead of simply promoting business interests, they began to regulate business’s as well.   
  
Regulatory agencies like the Securities and Exchange Commission were established.

Others like the Environmental Protection Agency would emerge later.  
  
This agency is a source of continual conflict between Texas and the national government since it involves regulating one of Texas’ principle industries – if not the key industry in the state.

Houston and the New Deal

It is crucial to note that as it became increasingly obvious in the late 1930s that the United States was going to enter into war efforts were made to ramp up production of war materials. This gave the national government huge control over the economic sector and provided huge contracts for well placed businesses.

The Houston area benefitted greatly. The further development of the Port of Houston and the petro-chemical industry (and related manufacturing industries as well) was spurred by this effort.  
  
Think: Brown and Root among others.

A historical side note is useful here.   
The Port of Houston was one of the first projects funded with matching grants between national and local governments. This arrangement was designed by noted Houstonian [Jesse Jones](http://en.wikipedia.org/wiki/Jesse_H._Jones).

Along with John Nance Garner, Jones was one of the Texans who played a dominant role in the Roosevelt Administration. He also has a position in the Hoover Administration. He headed the [Reconstruction Finance Corporation](http://en.wikipedia.org/wiki/Reconstruction_Finance_Corporation) and for a while was judged to be the second most powerful person in the nation.

Houstonians promoted an innovative funding proposal to [develop the Port of Houston](http://www.portofhouston.com/about-us/history/). The national government would match the amount of money that could be raised locally in order to enhance the port’s development. This fit within broader national goals promoting commerce.   
  
Matching grant programs would be used to promote other nationally defined goals.

The Impact of the   
Social Security Act

During the New Deal, the national government began taking the well being of citizens seriously, and passed laws addressing those (most famously Social Security). It no longer left these decisions to the states, because the states may not feel like addressing those issue, or of they did, did so in a way that that only served the interests of the majority, not the general welfare.

The Social Security Act was a large comprehensive bill passed in 1935 not only to establish a nationally run old age pension program, but a series of other programs funded on the national level but run by the states.

For example:   
  
[Unemployment Insurance](http://www.socialwelfarehistory.com/?s=Unemployment+insurance&submit.x=0&submit.y=0) and [Aid to Dependent Children](http://www.socialwelfarehistory.com/programs/aid-to-dependent-children-the-legal-history/).  
  
Aid to Dependent Children is now Temporary Assistance for Needy Children.

We will note later that several amendments had to be added to the Texas Constitution in order for Texas to receive federal funds for these programs.

In a later section on health policy we will note that the bulk of these programs are also funded by the national government, but run by the states.   
  
This allows a degree of local control over these programs. Historically states like to have close control of poverty programs.

Grants

The mechanism for promoting those policies was the intergovernmental [grant](intergovernmental%20grant). The federal government began encouraging certain actions among different institutions and people by providing grants to promote those actions. The encouragement could also take the form of coercion (at least in the minds of the states) when non-compliance with national directives could lead to a state losing funding.

There are many different types of grants, each with its own advantages, disadvantages and political baggage.

These grants can be project grants or categorical grants.

Project grants are generally targeted for a research project of some sort, often these are oriented towards medical or defense purposes.

[Categorical Grants](http://en.wikipedia.org/wiki/Categorical_grant): These are issued to address narrowly defined purposes including highway funding, Head Start, Food Stamps and Medicaid. Generally upwards of 90% of funds are provided by the national government with the requirement that the states provide the remaining 10%.

[Formula grants](formula%20grant) are designed to achieve a specific – ongoing – purpose and to define who is eligible for the support and how much the recipient (be it an individual or institution) is eligible to receive. Loans for higher education are an example you might be most familiar with.

More recently [block grants](http://en.wikipedia.org/wiki/Block_grant) have been used to provide funding for a specific purpose, but few restrictions are placed on how exactly the money is to be spent.   
  
These were created in order to respond to criticisms that categorical grants placed to much power in the national government and did not allow the states to fine tune policies so they would be appropriate for their needs.

[Earmarks](http://en.wikipedia.org/wiki/Earmark_(politics)) are also a mechanism that members of Congress can use to direct federal funding for specific purposes within their districts.

In addition to grants which encourage state and local governments to perform functions with national goals are a variety of laws that require them to do so, without the funding mechanisms to support them. These are called [unfunded mandates](http://en.wikipedia.org/wiki/Unfunded_mandate), and they’ve been the source of additional friction between the state and national governments.

The ability of the national government to compel state and local officials to carry out national policies has been restricted recently.   
  
Example: [Printz v the United States](http://en.wikipedia.org/wiki/Printz_v._United_States). State and local law enforcement officials could not conduct background checks as mandated by the [Brady Bill](http://en.wikipedia.org/wiki/Brady_Handgun_Violence_Prevention_Act).

Creative Federalism: 1961 – 1969  
Regulated Federalism: 1963 – 1981  
New Fiscal Federalism: 1969 – 1977  
Partnership Federalism: 1977 – 1981

I’m tossing these together because they all cover the same basic period, though they highlight different aspects of it.   
  
They were efforts to use the power and influence of the national government to deal with more difficult issues like sustained poverty and the inequality that existed due to the nation’s history of slavery and racial discrimination. They could be considered to be extensions of the programs established in the New Deal.

Here’s an attempt at [a definition](http://www.learner.org/courses/democracyinamerica/dia_3/dia_3_topic.html): ” also known as "picket fence federalism," predominated during the period of 1960 to 1980. This relationship was characterized by overloaded cooperation and crosscutting regulations.”   
  
For additional info on creative federalism – see [Eugene Boyd](http://www.cas.umt.edu/polsci/faculty/greene/federalismhistory.htm), [here you will see](http://www.csun.edu/~rprovin/PDFs/stages.pdf) the same stage referred to as “regulated federalism.” And [click here for power point slides](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CFsQFjAB&url=http%3A%2F%2Fcyfair3.schoolwires.net%2F194620413162933630%2Flib%2F194620413162933630%2FCreative_Federalism.ppt&ei=gJTLT5fSN4PD2QXMosjuBQ&usg=AFQjCNGXmaIgcBWQONKlcNVhet91lJPVDQ&sig2=Dx-XTOb_Z93lBax-Z8M3og) on the subject.

Some of these were promoted by [John F Kennedy](http://en.wikipedia.org/wiki/John_F._Kennedy)’s [New Frontier](http://en.wikipedia.org/wiki/New_Frontier) program.

The types of programs created in the New Deal were expanded. A Texan in the White House – [Lyndon Johnson](http://en.wikipedia.org/wiki/Lyndon_B._Johnson) – was a driving force behind these programs which fell under the label of the [Great Society](http://en.wikipedia.org/wiki/Great_Society).

Often these were done over the objections of some – though not all – of the states.  
  
Texas, for example, has been resistant to many of these policies.

The purpose of this stage of federalism was to impose on state and local governments policies that attempted to rectify racial and economic imbalances in society.  
  
Most notable, the range of programs that fit under the heading of the “War on Poverty” and the policies that were intended to give weight to the Civil Rights Act of 1964.

Here’s a list of some of the programs it established:

The Civil Rights Act  
The Voting Rights Act  
The Economic Opportunity Act  
The Elementary and Secondary Education Act  
Medicare and Medicaid  
  
Among many others

Here’s a look at the relative success of these programs:  
  
[The Great Society at 50](http://www.washingtonpost.com/sf/national/2014/05/17/the-great-society-at-50/).  
  
Opinions about them are mixed.

The policies promoted creative approaches to solving problems – involving actors on different levels of government – especially cities.  
  
It also established a regulatory regime that imposed certain policies on areas within the nation that were not necessarily willing to accept them. Ironically one area was Texas, Johnson’ home-state.

Many of these grants have allowed the national government to forge direct relationships with local governments and other institutional and individuals, bypassing the states. This made these programs unique.  
  
Little surprise then that the states (some more than others – like Texas) reacted to this.

It began to tie all levels of government more closely together fiscally ([fiscal](http://dictionary.reference.com/browse/fiscal) meaning: “of or relating to government finances, esp. tax revenues”).

This process is sometimes also referred to as “fiscal federalism.” Here some essays on the subject if you feel adventurous:   
  
- [An Essay on Fiscal Federalism](http://www.busi.mun.ca/apalasvirta/b5530/Oates_99.pdf).  
- [Federalism and Government Finance](http://books.google.com/books?hl=en&lr=&id=KlaVldPN62gC&oi=fnd&pg=PA126&dq=intergovernmental+grant+federalism&ots=1B1nKMkvPd&sig=1DHHDNijOdcoYAYA5gnMPMGBsx8).  
- [The Political Economy of Federalism](http://www.jstor.org/discover/10.2307/1956245?uid=3739920&uid=2&uid=4&uid=3739256&sid=56228485873).  
- [The Impact of the New Deal on American Federalism](http://www.nber.org/chapters/c6892.pdf).

This takes advantage of the [taxing and spending power](http://en.wikipedia.org/wiki/Taxing_and_Spending_Clause) in the U.S. Constitution and uses it to compel states to follow nationally defined policies.

These are most often imposed in order to enforce civil rights, environmental and poverty legislation.   
  
It was recently used to justify in part – and overturn in part – the [Affordable Care Act](http://en.wikipedia.org/wiki/Patient_Protection_and_Affordable_Care_Act).

While popular in certain circles, these imposed national policies places that opposed them. The New Deal did not touch civil rights or structural poverty. The Great Society did.  
  
This led to a backlash especially in places like Texas.

Conservative political forces in Texas that had been willing to accept the New Deal, reacted against the further reorientation of government towards civil rights and structural poverty by developing and promoting a contraction of national power and a revitalization of state power / rights.

Some states did not accept the national government’s vision of how poverty should be addressed, and whether civil rights was a problem requiring national attention.

Some of the opposition was couched in terms of budgeting.   
  
Some goals and programs – especially in areas like education – were mandated, but not funded. [Unfunded mandates](http://www.law.harvard.edu/faculty/hjackson/UnfundedMandates_7.pdf) became

Texas becomes the center of much of this political opposition.   
  
We’ll detail the various ways Texas responded to this in future sections, but – for example – it played a role in Texas becoming a Republican rather than a Democratic state.

The backlash against the Great Society became known – in some circles – as new federalism.

New Federalism  
1970s – 1990s  
1981 - ?

In brief, [New Federalism](http://en.wikipedia.org/wiki/New_Federalism) refers to efforts to devolve power from the national to the state governments and to undo many of the regulations over business passed in previous decades. It also attempts to decentralize power as much as possible.

Note: There is no sudden change from cooperative to new federalism. Beginning in the late 1960s – with the election of Richard Nixon – a slow process began where the expansion of the national government was challenged. This is an ongoing process. As of yet, the national government has roughly the same dimensions as it had in the 1960s, but further expansion has been halted.

The [1968 election](http://en.wikipedia.org/wiki/United_States_presidential_election,_1968) fought over the merit of Great Society and civil rights programs.  
  
The [Southern Strategy](http://en.wikipedia.org/wiki/Southern_strategy) was developed by the Nixon campaign to lure disaffected white southerners to the Republican Party.

Once Nixon was elected, three primary strategies were developed to reduce the ability of the national government to impose civil rights and poverty programs on the states.  
  
Nixon did not work hard to implement these strategies, that would come a decade later.

[Deregulation](http://en.wikipedia.org/wiki/Deregulation): Which is the process of reducing or removing regulations that had been imposed on various activities – usually economic. Proponents argues that deregulation fosters competition and leads to better products at lower prices.   
  
The affected areas can include environmental quality, financial transactions and labor relations.

[Devolution](http://www.britannica.com/EBchecked/topic/155042/devolution): The process of shifting authority in a given area from the national to the state level.   
  
Proponents argues that this allows for greater state and local control over certain policies. Opponents argue that it allows local prejudices to undermine these programs. Often they involve programs related to poverty, civil rights and education.

[Privatization](http://en.wikipedia.org/wiki/Privatization) refers to the transferring of a function carried out by a governing agency to a private agency. The term [outsourcing](http://en.wikipedia.org/wiki/Outsourcing) is also used to describe this.   
  
The authority to carry the function out is authorized by government, but delegated to the private company. Nationally this can include aspect of health care or the military. Within the state of Texas this involves law enforcement, prison management and transportation.

Proponents argue that privatization allows for programs to be run efficiently.   
  
Opponents dispute this and add that it allows for favoritism and corruption.

Attempts to undo the New Deal regulations and programs began soon after its passage, but not until [Ronald Reagan’s](http://en.wikipedia.org/wiki/Ronald_Reagan) election in 1980 was there any muscle behind efforts to impose cuts. This is why some argue that the period begins in 1981 following his inauguration.

Reagan carried Texas in the elections of 1980 and 1984 and helped reposition Texas as a Republican state.  
  
When we dig further into Texas’ history we’ll talk about how Texas’ attitudes about regulating business changed over history as Texas transitioned from an agrarian to a business state.

When business, like railroads, were located elsewhere and were seen as undermining the well being of Texans, support for regulation was high. When Texas developed an industrial base and lured businesses and corporation here, attitudes changed.  
  
The original Texas Constitution contained an article that concerned regulating railroads.

Reagan’s biggest impact might have been on the composition of the Supreme Court.   
  
Through a series of decisions the court cut back the scale of national programs – especially those related to regulations – by tightening up the interpretation of constitutional language authorizing national involvement in the market.

The court has also strengthened the concept of reserved powers – and the ability of the state to be immune from mandates passed on the national level.   
  
In addition the current court has scaled back its interpretation of what constitutes “equal protection of the laws” as written in the 14th Amendment. The national government has less ability to impose equal treatment in new areas – like sexual orientation for example – than it has in the past.

As an example: The Supreme Court recently decided that states could not be [compelled to expand medical coverage](http://en.wikipedia.org/wiki/National_Federation_of_Independent_Business_v._Sebelius) under Medicaid as was originally required in the Affordable Care Act.

Reagan also has the habit – as did Richard Nixon – of limiting the actions of federal agencies by placing people in them that did not share the goals and aspirations of those who created the agencies.   
  
This was – even though the agency could not be terminated – it could be restrained. This led to tension within federal agencies between the rank and file civil servants who were dedicated to their agency’s mission and the top leadership who did not.

For example, The [Equal Employment Opportunity Commission](http://en.wikipedia.org/wiki/Equal_Employment_Opportunity_Commission) can only achieve its mandate if it is staffed with people who want to aggressively pursue equal employment as a goal. Those who see this as an unwarranted interference with the rights of employers, want to see the commission derailed.   
  
Texas political leaders chief among them.

The same is true for the [Environmental Protection Agency](http://en.wikipedia.org/wiki/United_States_Environmental_Protection_Agency).  
  
Especially the EPA – energy companies have been trying to eliminate it for decades.

The push for deregulation preceded Reagan.  
  
The [deregulation of the transportation sector](http://en.wikipedia.org/wiki/Deregulation) began in the Ford and Carter Administrations. Other areas of deregulation included finance and communication.

[Click here](http://en.wikipedia.org/wiki/Breakup_of_the_Bell_System) for the story about the breakup of the [Bell System](http://en.wikipedia.org/wiki/Bell_System), which was established as a [regulated monopoly](http://en.wikipedia.org/wiki/Bell_Operating_Companies) in 1934.

Naturally, [energy deregulation](http://www.opensecrets.org/news/issues/electricity/) is especially interesting to Texans.

Here’s a dirty secret about regulating industry.   
  
Large scale industries are not necessarily opposed to regulations – so long as they get to influence the regulating. If they have sufficient influence on government they can ensure that people with backgrounds in the business will be able to design the regulation. They can use these to protect themselves from competition.

Industry is not really opposed to regulations.   
  
Just who is in charge of establishing regulations.

The relevant term is [regulatory capture](http://en.wikipedia.org/wiki/Regulatory_capture).  
  
Its one of the reasons why large corporations contribute money to political campaigns.

Devolution refers to attempts to take functions established at the federal level to the state and local level.   
  
States can then experiment with how to design these systems in order to determine what works best. And also what works best for that particular state.

Texas is a big supporter of devolution.  
  
They – notably the Attorney General - have been involved in court cases challenging mandates imposed on Texas based on national standards. These include education, health care, environmentalism, social issues and a handful of other matters.

We’ll discuss some of this further when we talk about Health and Human Services policy in the state later this semester.  
  
There have been attempts to allow states greater control over policies which benefit the poor and minority groups, but this also allows for states to reduce these programs and provide fewer benefits than the national government would prefer.

However, it also allows for experimentation.   
  
Previously we discussed the concept of states as [laboratories of democracy](http://camlaw.rutgers.edu/statecon/publications/lab.pdf). Devolving public policy to the states allows for experimentation.

Texas companies are also very interested in privatization since it provides opportunities for new revenue streams.   
  
Federal contracts are worth a lot of money. Close connections with key U.S. government departments – like the Department of Defense - help guarantee those contracts.

For example: The government does not develop and manufacture weapons systems on its own.   
  
Significant aspects of [General Dynamics](http://en.wikipedia.org/wiki/General_Dynamics) manufacturing happens in Fort Worth.

Another example: [Ross Perot](http://en.wikipedia.org/wiki/Ross_Perot) started [Electronic Data Systems](http://en.wikipedia.org/wiki/Electronic_Data_Systems) in 1962 and hit the jackpot in 1965 when the company got the contract handle data processing for the newly created Medicare and Medicaid systems.

Some final thoughts – how effective have these efforts to limit the scope of national power been?

Not very.   
  
The size and scope of government keep increasing.

Here is a complicating factor when attempting to reign in the size of government.   
  
When programs are created, constituencies emerge which obtain benefits from those programs. They can gain allies in Congress that will vote to maintain the programs because it is in their electoral interest to do so. In 2305 we discussed the concept of an iron triangle or a sub-government. If an interest group is sufficiently strong, it can resist

When Republicans took control of Congress in 1994, they were in a better position to terminate or scale back federal programs, and some were. Welfare reform for an example. But other aspects of the federal government have proved popular and are very risky to terminate.

For example: two programs – Social Security and Medicaid – are very popular with older voters. So is the Defense Department, which was replaced the Department of War in 1947. Each has strong and politically powerful supporters – the elderly and the military.  
  
Together they are about 3/4s of the size of the national government. Much of what they each spend is dispersed around the country. This further creates constituencies that seek to retain them.

Nevertheless, the attempt continues and defines the nature of contemporary political disputes.

So where does that leave us?

The current balance between national and state power appears to have stalemated.   
  
But every election invites the opportunity for change. These will be discussed in class as current events come and go.